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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,649	02/20/2004	Geoffrey N. Holland	7135USO4	7346

41155 7590 10/07/2010  
BRIAN R. WOODWORTH  
275 N. FIELD DRIVE  
DEPT. NLEG BLDG H-1  
LAKE FOREST, IL 60045-2579

EXAMINER
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RINES, ROBERT D

ART UNIT	PAPER NUMBER
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3623

NOTIFICATION DATE	DELIVERY MODE
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10/07/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

BRIAN.WOODWORTH@HOSPIRA.COM  
MICHAEL.CRABB@HOSPIRA.COM  
HOSPIRA.DOCKET@CARDINAL-IP.COM

<b>Office Action Summary</b>	<b>Application No.</b> 10/783,649	<b>Applicant(s)</b> HOLLAND ET AL.	
	<b>Examiner</b> R. David Rines	<b>Art Unit</b> 3623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 15 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

[1] A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 22 September 2010 has been entered.

### ***Notice to Applicant***

[2] This communication is in response to the Amendment and the Request for Continued Examination (RCE) filed 22 September 2010. It is noted that this application benefits from Provisional Patent Application Serial No. 60/509,404 and 60/527,583 filed 7 October 2003 and 5 December 2003, respectively. Claims 1-11 and 13-14 have been cancelled. Claim 12 has been amended. Claims 12, 15, and 16 are pending.

Rejections of claims 13, 15, 16 are maintained as set forth in the previous Office Action mailed 22 June 2010, herein incorporated by reference. Applicant's remarks and amendments to claim 12 are addressed below.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[2] Claims 12, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eggers et al. (United States Patent Application Publication #2006/0106649) in view of Engleson et al. (United States Patent #7,117,041), and further in view of Ford et al. (United States Patent Application Publication #2002/0077852).

With respect to (currently amended) claim 12, Eggers et al. disclose a method for tracking a portable medical device that is movable to and reusable in a plurality of physical location in connection with a plurality of patients and connectable with an electronic network having one or more access nodes, comprising: determining the last access node used by a medical device and reporting the last used access node to a medication management unit (Eggers et al; paragraphs [0056]-[0058]); determining the last known general physical location of a medical device based on the last access node used by the medical devices as reported at the medication management unit (Eggers et al; paragraphs [0056]-[0058]).

With respect to the "determining the last access node" step to further include "...reporting the last used access node to a medication management unit that is remote from the medical device and connectable with the electronic network..." and the displaying step to further specify that the recited "access device" is "...located remotely from the medication management unit and the medical device...", both Eggers et al. and Engleson et al. disclose tracking the medical device via the network and reporting the location to a central device/medication management unit (see Eggers et al.; paragraphs [0056]-[0058] and Engleson et al. col. 10, lines 45-67, col. 11, lines 1-14. Engleson et al. further disclose displaying the last known general physical location of a medical device at a user access device, based on a report from the medication management unit (Engleson et al. col. 10, lines 45-67, col. 11, lines 1-14 \*see display of hospital map). Engleson et al. further disclose that the status of the equipment can be ascertained from the nurses CPU (Engleson et al.; col. 10, lines 23-45). Examiner considers the nurses CPU to be an access device remote from the medication management unit.

With respect to the recitation of "activating and emitting" step to further recite; "...activating and emitting an audio location alarm from the medical device in response to an audio location alarm request from the user access device relayed through the medication management unit such that the medical device audibly broadcasts the audio location alarm at a then current and specific physical location of the medical device regardless of position relative to another medical device..."

With respect to the medical device reporting its location, Engleson et al. disclose that the system "maintains a record of the current or last known location within the institution, such as an infusion pump or vital sign sensor.....the status of that equipment can be easily ascertained from a video display connected to the nursing CPU..." (Engleson et al.; col. 10, lines 45-62). Engleson further disclose a system capable of emitting alarms and alerts and further displaying those alerts (Engleson et al.; col. 10, lines 23-45).

With respect to the recitation of "...proceeding with the user access device to the last known general physical location of the medical device..." and "if upon, proceeding with the user access device to the last known general physical location of the medical device, the medical device is one of absent, commingled with other medical devices, and hidden from view such that additional assistance is required to ascertain a then current and specific location of the medical device, then transmitting an audio alarm message from the user access device to the medication management unit; in response to receipt of the request audio alarm message, transmitting an order audio locator alarm message from the medication management unit to the medical device..."

As per these elements, Engleson et al. disclose determining and displaying the location of the device and alerts and alarms associated with the device, Engleson et al. fail to specifically disclose a medical device that emits audibly alarms.

However, medical infusion pumps which emit an audibly alarm in accordance with various user settings are well known in the art as evidenced by Ford et al. (Ford et al.; paragraphs [0124]-[0128] [0189]). Examiner considers the utilizing the audibly beeping sound of the pump to locate the pump to be an intended use for the beeping.

Claim 1 has been with respect to the recited user access device to further specify that the access device is "...portable...". As per this element, all of the noted references disclose portable devices. Examiner further notes that Engleson et al. is primarily relied upon to teach to network location component. Engleson et al. disclose a workstation/computer. Examiner notes that the fact that the claimed device is now designated as "portable" will not distinguish the claimed invention from the art of record. The fact that a claimed device is portable or movable is not sufficient by itself to patentably distinguish over an otherwise old device unless there are new or unexpected results. In re Lindberg, 194 F.2d 732, 93 USPQ 23 (CCPA 1952)

The above noted amendments to claim 12 appear to be directed to the actions of a user, i.e., a nurse or medical personnel (e.g. proceeding to the location etc.). Examiner considers "proceeding to the last known location" to constitute a user choice. The medical personnel can walk or "proceed" to wherever they choose. Examiner further maintains that the location of the pump (e.g. commingled with other devices, hidden from view, absent etc.) would not alter the beeping of the pump disclosed by Ford et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified network-based technologies to assist in determining the location of each device as a result of their respective connection points to the network (Egges et al.; paragraphs [0056]-[0059]) to further display the location as disclosed in the tracking and monitoring hospital clinical devices of Engleson et al. (Engleson et al.; col. 10, lines 45-61) with the motivation of rapidly locating the required device in cases of emergency (Engleson et al.; col. 10, lines 56-60). It would have been further obvious to one of ordinary skill in the art to have modified the location tracking and displaying features by further utilizing well known audible alarm equipped medical devices/pumps as taught by Ford et al. (Ford et al.; paragraphs [0124]-[0128] [0189]) with the motivation of directing the healthcare providers attention to the pump when an action for the medical care of a patient is required (Ford et al.; paragraph [0126]).

As per claim 15, Engleson et al. disclose a system wherein the medical device is selected from a group of medical devices consisting of a medical pump, a medical diagnostic device, and a patient vital signs monitor (Engleson et al.; col. 6, lines 38-50 col. 10, lines 45-60 \*see infusion pump or vital sign sensor).

As per claim 16, while Engleson et al. disclose alarms and alerts, Engleson et al. fail to teach a delayed alert.



However, Ford et al. disclose a time delay before emitting an audible beeping sound from a medical infusion pump (Ford et al.; paragraphs [0124]-[0126]). Examiner considers using emitted sound to locate the pump to be an intended use.

Regarding claims 15-16, the conclusions obviousness and statements of motivation as discussed with regard to claim 12 above are applicable to claims 15-16 and are herein incorporated by reference.

***Response to Remarks***

Applicant's remarks filed 22 September 2010 have been fully considered but they are not persuasive. The remarks will be addressed below in the order in which they appear in the noted response.

Applicant remarks that the amendment to indicate that the claimed access device is a “portable access device” distinguishes over the art of record.

In response Examiner respectfully disagrees and notes that the fact that the claimed device is now designated as “portable” will not distinguish the claimed invention from the art of record. The fact that a claimed device is portable or movable is not sufficient by itself to patentably distinguish over an otherwise old device unless there are new or unexpected results. In re Lindberg, 194 F.2d 732, 93 USPQ 23 (CCPA 1952). Examiner further submits that the user traveling to a different location to use the “portable” device does not constitute an unexpected result but rather merely recites a user choice.

Applicant's remaining remarks reiterate arguments addressed in the previous Office Action, mailed 22 June 2010. In response, Examiner relies on the response set forth in the Office Action mailed 22 June 2010, hereby incorporated by reference.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. David Rines whose telephone number is (571)272-5585. The examiner can normally be reached on 8:30am - 5:00pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on 571-272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. David Rines/  
Primary Examiner, Art Unit 3623